

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3308 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATIONAL INSURANCE CO. LTD

Versus

GOVABHAI PUNJABHAI PARMAR

Appearance:

MR SB PARIKH for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/10/96

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly in the third round, but none put appearance on behalf of the respondent.

2. Heard learned counsel for the petitioner and perused the Special Civil Application. It is apparent from annexure 'A', judgment of the Motor Accident Claims

Tribunal (Main), Junagadh made in M.A.C. Petition No.180 of 1984 on 9th October, 1985 that the negligence of both the claimant and driver of the vehicle was held to be 50%-50%. The respondent-claimant has claimed the damages from the owner and driver of the vehicle for the injury which is sustained in the accident. The respondent-claimant on the fateful day was going on his scooter. The case of the claimant before the Tribunal was that the opponent no.1 was driving the motor vehicle rashly and negligently at an excessive speed, collided with the scooter, as a result of which he sustained the injuries. He claimed under the various heads, compensation of Rs.1,02,400/-. The Tribunal awarded the compensation under different heads to the claimant, respondent herein, as under:

Rs.10,000/- to undergo prolong treatment
Rs.7,000/- towards medical treatment,
conveyance, attendance etc.
Rs.14,400/- by loss of income for one year
Rs.32,400/- towards future loss of income

Rs.63,800/- Total

3. As the learned Tribunal has not given effect to 50% negligence of the claimant while computing the amount of the compensation other than the amount of compensation towards the future loss, taking it to be a case of clerical and arithmetical mistake, the petitioner filed a review application before the Motor Accident Claims Tribunal, Junagadh. In the review application, the Tribunal has accepted as a fact that there is an error apparent on the face of the record, and in case, the Tribunal had a power of review, it would have done it without a moment's hesitation. The relevant observation of the Tribunal in this respect as contained in para no.40 in the order dated 13th March, 1987 reads as under:

Of course, on merits I must frankly admit that
there is an error apparent on the face of record
and as such had I had the power to review, I
would have done it without a moment's hesitation.
The review application has been dismissed only on the ground that there is no provision for review of the award made by the Tribunal.

4. The learned counsel for the petitioner contended that it is not a case of review, it is a case of correction only of clerical or arithmetical mistake in the award, and as such, the Tribunal has all the powers to correct the same.

5. I do not consider it appropriate to decide in this case this large issue, but it is suffice to say that certainly it a case where there is error apparent on the face of the award made by the Tribunal. It has also been held as a fact by the Tribunal while dealing with the review application of the petitioner. The Tribunal in para no.41 of the order dated 13th March, 1987 held that the negligence of the petitioner was found to be 50% and in that case, obviously the all-told amount to be awarded to the petitioner (respondent herein) would be one-half of the total amount to which he was found entitled and, calculated from that point of view, the petitioner could not have been entitled to the amount more than what the insurer now contends, and, consequently, it may at once be said that on merits the insurer has, without any doubt, a good case, but as the Motor Claims Tribunal has no power to review, I have no authority but to allow the insurer to find its own remedy.

6. The petitioner has filed the review application within reasonable time and this writ petition before this court also without any delay.

7. Taking into consideration the totality of the facts of this case, I consider it to be a fit case in which this court should exercise its power under Article 227 of the Constitution of India to correct the aforesaid error apparent on the face of the order of the Tribunal dated 9th October, 1985. Order accordingly. The amount as awarded to the respondent under the heads other than the compensation of future loss of income is reduced to Rs.15,700/- from that of Rs.31,400/-. Total amount of compensation for which the respondent is entitled is of Rs.32,400/- + Rs.15,700/- = Rs.48,100/- instead of Rs.63,800/-, as awarded. Rest of the part of the award is maintained. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-